IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3073 OF 2006

Mrs Priya Murlidhar Chaini) ...Applicant

Vs.

1. Shri Govind Prasad Shriwastav)
2. The Union of India)
3. The Director,
Central Bureau of Investigation)
4. The State of Maharashtra) ...Respondents

Shri Nitin Pradhan with Ms. Shubhada Khot for the Applicant.

Ms Rohini Wagh for the Respondent No.1.

Shri A.S.Gadkari, A.P.P. for the State.

CORAM : ABHAY S. OKA, J.

DATE ON WHICH SUBMISSIONS ARE CONCLUDED : SEPTEMBER 26, 2006.

DATE NO WHICH JUDGMENT IS PRONOUNCED : OCTOBER 05, 2006.

JUDGMENT:

1. By this Application under sections 482 and 439(2) of the Code of Criminal Procedure, 1973 the Applicant has taken exception to the Order dated 11th August, 2006 by which the learned Additional Sessions Judge granted bail in favour of the first Respondent and directed concerned Officers to take appropriate action for bringing back the first Respondent to India at the earliest after his release on bail. The said

order is challenged basically by invoking the jurisdiction under section 482 of the said Code on the ground that the learned Additional Sessions Judge had no power to give directions to the concerned officers for completing extradition procedure under the provisions of the Extradition Act, 1962 (hereinafter referred to as the said Act of 1962). The second ground of challenge is that the first Respondent was not in custody and therefore, the learned Judge had no jurisdiction to grant bail.

2. For the purpose of appreciating the submissions made by the learned Counsel appearing for the parties, it will be necessary to refer to the facts of the case. The Applicant is the first informant. The Applicant filed an F.I.R. on 06th October, 2004 which was registered with the Economic Offences Wing, GB, CB, C.I.D., Mumbai against the first Respondent for offences punishable under section 420, 465, 467, 468, 471 read with section 34 of the Indian Penal Code. Since there is no challenge to the order granting bail on merits, it is not necessary to go into details of the allegations made against the first Respondent in the First Information Report. Apart from the first Respondent, one Shri Dushyant Shantilal Bhojak was also one of the accused persons

named under the said F.I.R. who was arrested. The first Respondent being a permanent resident of U.S.A. could not be arrested.

3. A report was filed on 16th December, 2004 by the Senior Inspector of Police, Economic Offences Wing, Unit V, CB C.I.D., Mumbai before the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai stating that investigation was in progress on the basis of a F.I.R. filed by the Applicant. It was stated in the said report that the first Respondent was a resident of New Jersey, U.S.A. and there was no sign of his arrival in India in near future. It was submitted that there was an ample evidence against the first Respondent. It was submitted that a red corner notice through Interpol was required to be issued against him for the purposes of tracing him. It was submitted that a standing non-bailable warrant against the first Respondent was required to be issued for the purpose of obtaining a red corner notice. On 16th December, 2004, the learned Magistrate directed that a standing non-bailable warrant shall be issued against the first Respondent as prayed. According to the case of the Investigating Officer, the said report was made for invoking powers under section 105-B of the Code of

Criminal Procedure, 1973. On the basis of the said standing warrant, a red corner notice was issued by Interpol on 03rd April, 2005. On 19th April, 2005 a chargesheet was submitted to the court of the learned Additional Chief Metropolitan Magistrate in which the first Respondent was shown as a wanted accused. According to the Investigating Officer the first Respondent was detained in United States on 02nd August, 2005. However, he got himself released on 13th September, 2005. Ultimately, on 31st May, 2006 the first Respondent was arrested by the Federal Police of Brussels in Belgium at the cross border check point of the airport when the first Respondent had arrived from New York. On the basis of direction issued by the Assistant Director IP, CBI, Central Unit, New Delhi, the procedure for preparation of extradition documents was started. As noted in the earlier order passed by this court in this Application, the extradition procedure has been completed and now within few days the first Respondent will be brought to India and will be produced before the learned Magistrate.

4. It will be also necessary to note that on 27th June, 2006 an Application was moved by the Advocate for the first Respondent before the learned

Magistrate. In the said Application it was stated that the accused/first Respondent was willing to appear before the learned Magistrate for cancellation of warrant. It was prayed that the warrant may be stayed. On the said Application, on the same day, learned Magistrate passed an order staying the warrant till 11th July, 2006. On 10th July, 2006, an Application was made on behalf of the first Respondent before the learned Magistrate. It was stated in the Application that when the first Respondent was trying to come to India to face the charges, he was detained at Brussels, Belgium on 31st May, 2006. It was stated that the warrant issued by the learned Magistrate was not yet executed. It was also stated that the first Respondent was willing to remain present before the learned Magistrate and he was willing to settle the matter. The first prayer made in the said Application was for stay of non-bailable warrant for a period of week. In the alternative, it was prayed that the first Respondent may be released on bail. By order dated 11th July, 2006 the learned Magistrate rejected the Application. While rejecting the Application the learned Magistrate mentioned that order dated 27th June, 2006 of stay of warrant was obtained from him by concealing the fact that on 31st May, 2006 the first Respondent was arrested by the police authorities in

Belgium. The learned Magistrate rejected the prayer for bail on the ground that the first Respondent was neither arrested nor was he before the court.

5. The documents produced on record show that a temporary warrant of arrest was issued on 31st May, 2006 by the Judge of Investigation of District Brussels. English translation of said warrant is produced on record and there is no dispute between the parties as regards correctness of the English translation. In the temporary warrant of arrest it is stated that an arrest warrant was asked by Indian Government because of urgency. The warrant refers to Article 1 of the Law 15.03.1874 and Article 5 of the extradition treaty concluded with Government of India. It is stated in the warrant that offences alleged against the first Respondent are serious and bad enough and make an infringement of the public security. It is also stated that it proves an important lack of respect for the legal rules of our society and show a dangerous state of mind of the suspect. It is also recorded that the offences alleged against the first Respondent of swindling and false entry were existing in Article 1 of the Law 15.03.1873. It was also stated that a provisional arrest warrant must be issued because of the facts and

also in order to extradite the suspect.

6. Shri Pradhan, the learned counsel appearing for the Applicant submitted that the learned Additional Sessions Judge could not have exercised jurisdiction under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) as the first Respondent was neither in custody nor had surrendered before the appropriate court. He placed reliance on several decisions of the Apex Court. I have dealt with the said decisions in the later part of this Judgment. He submitted that the learned Additional Sessions Judge could not have relied upon section 25 of the said Act of 1962 for grant of bail. He submitted that there was a complete lack of jurisdiction in the learned Judge as by no stretch of imagination the first Respondent was in custody. He submitted that no direction could have been be given by the learned Additional Sessions Judge for expediting the extradition procedure under said Act of 1962 and jurisdiction to give such direction was not vesting in the learned Judge. He submitted that jurisdiction to grant bail can be exercised only after the first Respondent is produced before the learned Magistrate after completion of extradition procedure.

7. The learned counsel for the first Respondent submitted that the first Respondent was arrested on the basis of warrant issued by the learned Magistrate and the arrest was in connection with the offence of which cognizance was taken by the learned Magistrate. She, therefore, submitted that the first Respondent was in custody on the basis of the warrant issued by the learned Magistrate and the learned Additional Sessions Judge was well within his powers to grant bail. She submitted that under section 25 of the said Act of 1962 power to grant bail can be exercised. She submitted that the direction given by the learned Judge for completing the extradition procedure was only with the object of ensuring that the first Respondent is brought before the court of the learned Magistrate at the earliest. The learned A.P.P Shri Gadkari submitted that as the first Respondent was not in custody, the learned Additional Sessions Judge had no jurisdiction to grant bail. He pointed out that the learned Magistrate had denied the bail to the first Respondent on the ground that the first Respondent was neither arrested nor was he produced before him.

8. The learned counsel appearing for the parties

have placed reliance on various decisions of the Apex Court as well as High Courts. They have invited my attention to the treaty executed by and between the Government of India and Kingdom of Belgium

9. I have carefully considered the submissions. The perusal of the order passed by the learned Additional Sessions Judge shows that he has discussed the merits of allegations against the first Respondent. I am not concerned with the said aspect at this stage. The learned Additional Sessions Judge observed that the first Respondent was arrested and was kept in jail, though in other country, this action is taken on the basis of a non-bailable warrant issued by the learned Magistrate. The learned Additional Sessions Judge, therefore, held that it can be stated that the first Respondent was in custody and the court can entertain the Application for bail. The operative part of the order passed by the learned Additional Sessions Judge reads thus:

> "1. Application is allowed.
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> 2. Applicant Govindprasad Radheylal Shrivastave in C.R.No.73/04 from G.B.C.B.C.I.D. P.Stn. be released on

P.R.Bond of Rs.2 lacs with solvent surety or bank guarantee or cash security for the like amount.

3. Applicant is directed to submit an undertaking to the effect that within one month from the date of his release he shall settle the dispute.

4. Applicant is directed to surrender his passport in the office of C.B.C.B.C.I.D. in Mumbai after his arrival till the matter is disposed off from the court of Ld.Additional Chief Metropolitan Magistrate, Mumbai.

5. Applicant is further directed to attend court of Ld.Additional Chief Metropolitan Magistrate, Mumbai as and when directed for early disposal of the case.

6. Applicant has already submitted his letter of consent for extradition to India. Concerned officers are directed to take appropriate action for bringing back the applicant to India at the earliest after his

release on bail".

10. The first issue to be considered is whether a direction could have been given by the Additional Sessions Judge to the concerned Officers for taking appropriate action for bringing back the Applicant to India at the earliest after his release on bail.

11. At the outset it must be stated that the direction which is given in clause No.6 of the operative part of the order has nothing to do with power under section 439 of the said Code. The learned Additional Sessions Judge does not possess any inherent power either under the Code or under any other law.

12. It will also be necessary to refer to the provisions of said Act of 1962. Clause (c) of sub-section 2 of the said Act defines "extradition offence" which reads thus:

"(c) "extradition offence" means-

(i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition

treaty with that State;

(ii) in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence,"

Clause (d) defines "extradition treaty" which reads thus:

"(d) "extradition treaty" means a treaty[,agreement or arrangement] made by India with a foreign State relating to the extradition of fugitive criminals, and includes any treaty [,agreement or arrangement] relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India;"

Clause (f) which defines "fugitive criminal" reads thus:

"(f) "fugitive criminal" means a person who is accused or convicted of an

> extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accompliance in the commission of an extradition offence in a foreign state".

Clause (j) provides that "treaty State" means a foreign State with which an extradition treaty is in operation.

13. The first Respondent is not convicted or accused of an extradition offence within jurisdiction of a foreign State. There is no allegation against the first Respondent of his involvement in any manner with any extradition offence within jurisdiction of a foreign State. Therefore, in this case, the first Respondent is not a fugitive criminal as is clear from aforesaid definition in section 2(f). However, the question which will have to be considered is whether the offence alleged against the first Respondent is an extradition offence. The Applicant has placed on record a copy of treaty between the Government of India and Kingdom of Belgium. Article 1 covers the offences alleged against the first Respondent. Therefore, it can be said that extradition offence has

been alleged against the first Respondent. Chapter II and chapter III of the said Act of 1962 deal with fugitive criminals. In this case, the relevant chapter will be chapter IV. Sections 19 and 20 of the said Chapter are relevant which read thus:

> "19. Mode of requisition or form of warrant for the surrender or return to India of accused or convicted person who is in a foreign State.- (1) A requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is or is suspected to be, in any foreign State or [foreign State] to which Chapter III does not apply, may be made by the Central Government-
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> (a) to a diplomatic representative of that State or country at Delhi; or
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> (b) to the Government of that State or country through the diplomatic representative of India in that State [or country]
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> and if neither of these modes is convenient,

the requisition shall be made in such other mode as is settled by arrangement made by the Government of India with that State [or country].

(2) A warrant issued by a Magistrate in India for the apprehension of any person who is, or is suspected to be, in any [foreign State] to which Chapter III applies shall be in such form as may be prescribed.

20. Conveyance of accused or convicted person surrendered or returned.- Any person accused or convicted of an extradition offence who is surrendered or returned by a foreign State may, under the warrant of arrest for his surrender or return issued in such State, be brought into India and delivered to the proper authority to be dealt with according to law".

Section 25 of the said Act of 1962 reads as under:

"25. Release of persons arrested on bail.- In the case of a person who is a fugivite criminal arrested or detained under

> this Act, the provisions of [the Code of Criminal Procedure, 1973], relating to bail shall apply in the same manner as they would apply if such person were accused of committing in India the offence of which he is accused or has been convicted, and in relation to such bail, the Magistrate before whom the fugitive criminal is brought shall have, as far as may be, the same powers and jurisdiction as a Court of Session under that Code."

Thus, section 25 will have no application in the present case as it applies only to a fugitive criminal.

14. Perusal of provisions of section 19 shows that a requisition for surrender of a person accused or convicted who is or is suspected to be, in a foreign State to which Chapter III does not apply is to be made by Central Government either to a diplomatic representative of the said foreign State at Delhi or Government of that State or country through a diplomatic representative of India in that country. Section provides that if neither of the modes is convenient, the requisition shall be made in such

other modes as is settled by the Government of India with the said country. Section 20 provides that any person accused of extradition offence is surrendered or returned by foreign State may, under the warrant of arrest for his surrender or return issued in the foreign State, be brought to India and delivered to the proper authority to be dealt with according to law. Thus, after requisition is submitted under section 19, it is for the concerned country or State to take a decision to return the person under the warrant of arrest for his surrender or his return issued in the said country. At this stage it will be necessary to refer to Article I of the Agreement between Government of India and the Kingdom of Belgium. The relevant part of the said Article I of the Agreement reads thus:

> "In no case can the surrender be made unless the crime shall be punishable according to the laws in force in both countries with regard to extradition. In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalization".

Thus, the Kingdom of Belgium is under no obligation to surrender a person to India unless the Crime alleged is punishable according to laws in force in both the countries with regard to extradition. Article III of the Agreement is also relevant. Clause 1 of Article III reads thus:

> "1. In the case of a person accused -
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> The requisition for the surrender shall be made to the Minister for Foreign Affairs of His Majesty the King of the Belgians by the Minister or other Diplomatic Agent of His Britannic Majesty, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in Great Britain, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any other particulars which may serve to identify him. The Minister for Foreign Affairs shall transmit the warrant of arrest, with

the documents thereto annexed, to the Minister of Justice, who shall forward the same to the proper judicial authority, in order that the warrant of arrest may be put in course of execution by the Chamber of the Council (Chambre du Conseil) of the Court of First Instance of the place of residence of the accused or of the place where he may be found. The foreigner may claim to be provisionally set at liberty in any case in which a Belgian enjoys that right, and under the same conditions. The application shall be submitted to the Chamber of the Council (Chambre du Conseil). The Government will take the opinion of the Chamber of Indictments or Investigation (Chambre des Mises, en Accusation) of the Court of Appeal within whose jurisdiction the foreigner shall have been arrested. The hearing of the case shall be public, unless the foreigner should demand that it should be with closed doors. The public authorities and the foreigner shall be heard. The latter may obtain the assistance of counsel. Within a fortnight from the receipt of the documents

they shall be returned, with a reasoned opinion, to the Minister of Justice, who shall decide and may order that the accused be delivered to the person duly authorized on the part of the Government of His Britannic Majesty".

15. It is obvious that the extradition is not mechanically made only on the basis of requisition coming from the Government of India. The warrant of arrest received from India is required to be forwarded by the Minister of Justice of Kingdom of Belgium to the proper Judicial Authority. It provides that the foreigner may claim to be provisionally set at liberty in any case in which a Belgian enjoys that right, and under same conditions. Before completion of procedure of extradition, hearing has been contemplated under the Agreement.

16. The material placed before the learned Additional Sessions Judge showed that the procedure has been initiated in India for seeking extradition of the first Respondent under section 19 of the said Act of 1962. The learned Additional Sessions Judge could not have directed the concerned officers to take action for bringing back the first Respondent to India

and that also after his release on bail. After a requisition for extradition was submitted by the Government of India, it was for the authorities in the Kingdom of Belgium to take appropriate decision. Therefore, such a direction was uncalled for. In any event, while exercising power under section 439 of the said Code, the Sessions Court had no jurisdiction to issue such a direction.

17. Considering the provisions of sections 19 and 20 of the said Act of 1962 it is difficult to understand how the first Respondent could have been brought to India after he was released on bail. On plain reading of section 20 of the said Act of 1962, it is obvious that the first Respondent will have to be brought to India under the warrant of arrest for his surrender or return issued in Belgium and he will have to be handed over to the proper authority.

18. That takes me to consideration of second question whether bail could have been granted to the first Respondent. The facts narrated above show that on the basis of standing warrant issued by learned Metropolitan Magistrate in Mumbai, the Judge of Investigation at Brussels issued temporary warrant of arrest after application of mind and on the basis of

the said temporary warrant, the first Respondent has been detained at Brussels. Section 439 provides that a court of Sessions or High Court may grant bail to any person accused of an offence and in custody. Section 437 of the Code grants a power to the learned Magistrate to release any person accused of or suspected of commission of any non-bailable offence on bail when he is arrested or detained without warrant by an officer in-charge of a police station or when he appears or is brought before the court. Power under section 439 of the said Code can be exercised in case of a person who is in custody. The learned counsel for the Applicant has placed reliance on the decision of the Apex Court in the case of **Sunita Devi Vs. State of Bihar & Anr. (2005(1) Supreme Court Cases Page 608)**. The question before the Apex Court was whether an Applicant who applies for bail under section 439 of the Code has to be in custody for moving such application. The Apex Court relied upon its earlier decision in the case of **Niranjan Singh Vs. Prabhakar (AIR 1980 Supreme Court Page 785)**. In paragraph No.13 of the decision, the Apex Court held that unless a person is in custody, an Application for bail under section 439 of the Code would not be maintainable. Therefore, the question is whether the first Respondent was in custody when the bail

application was moved on his behalf. Paragraphs 14 and 15 of the decision of the Apex Court in the case of Sunita Devi (supra) are relevant for the said purpose which read as under:

> "14. The crucial question is when is person in custody, within the meaning of Section 438 of the Code? **When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439**. The word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into

informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law.

15. Since the expression "custody" though used in various provisions of the Code, including Section 439, has not been defined in the Code, it has to be understood in the setting in which it is used and the provisions contained in Section 437 which relate to jurisdiction of the Magistrate to release an accused on bail under certain circumstances which can be characterised as "in custody" in a generic sence. **The expression "custody" as used in section 439, must be taken to be a compendious expression referring to the events on the happening of which the Magistrate can entertain a bail petition of an accused. Section 437 envisages, inter alia, that the Magistrate may release an accused on bail, if such accused appears before the Magistrate. There cannot be any doubt that such appearance before the Magistrate must be**

physical appearance and the consequential surrender to the jurisdiction of the court of the Magistrate".(Emphasis supplied)

19. In another decision of the Apex Court in the case of **Nirmaljeet Kaur Vs. State of M.P. (2004(7) Supreme Court Cases Page 558)** the Apex Court considered the said question. In paragraph Nos.16 and 17 of the said judgment the Apex Court has reiterated the view taken in Sunita Devi's case.

20. The learned counsel for the first Respondent relied upon the decisions of the Apex Court in the case of **State Vs. Dawood Ibrahim (1997 Criminal Law Journal Page 2989) and Smt Maneka Gandhi Vs. Union of India (AIR 1978 Supreme Court Page 597)**. These decisions do not deal with the meaning of the word 'custody' in section 439. The counsel appearing for both the parties have relied upon dictionary meaning of the word 'custody'. However, in view of the aforesaid decisions of the Apex Court laying down the law on the point, I have not referred to the dictionary meaning of the word.

21. As held in the decisions of the Apex Court in the case of Sunita Devi (Supra) and Nirmaljeet Kaur

(Supra), a person can be said to be in custody within meaning of section 439 of the Code when he is in duress as he is held by the investigating agency or other police or allied authority. He can be said to be in custody when he is under the control of the court having been remanded by Judicial Officer. A person can be said to be in custody where he offers himself to the court's jurisdiction and he submits to the orders of the court by his physical presence. The Apex Court has held that one who is under the control of the court or one who is in physical hold of an officer with coercive power is in custody for the purpose of section 439. The question which arises is whether the case of the first Respondent is covered by any of the aforesaid categories. The first Respondent is obviously neither held by the investigating agency which is the Economic Offences Wing in this case nor is he under the control of the said agency. He is also not held in duress by the police or allied authority. The learned counsel for the first Respondent tried to submit that the authority at Brussels is an allied authority. However, the said interpretation cannot be accepted for the simple reason that the word 'allied authority' obviously means an authority of the nature of investigating agency or the police authority in India. The

authority in Belgium which arrested the first Respondent on the basis of warrant issued by the Judge of Investigation, Brussels cannot be termed as an allied authority. Thus, the first Respondent does not fall in this category. The second category is of a person who is under the control of the court having been remanded by a judicial order. In the present case, the first Respondent has never appeared before any Indian Court in connection with the offence and therefore, he cannot be said to be under control of the court. The third category will also have no application because he has not appeared before any court in India till today in connection with the F.I.R lodged by the Applicant.

22. The learned counsel for the first Respondent relied upon a decision of Lahore High Court in the case of **Emperor Vs. Karimbux Rahamatan (AIR 1940 Sind 154)** which holds that warrant under section 75 of the Code of Criminal Procedure, 1898 can be executed only in British India. Under the said Code of 1973 warrant of arrest issued under Chapter VI can be executed only in India in view of express language of Section 77. Merely because the concerned authority in Brussels issued warrant against the first Respondent on the basis of red corner notice which was issued on the

basis of standing warrant issued by the learned Magistrate, it cannot be said that the first Respondent was in custody within the meaning of section 439 of the said Code. The view taken by the learned Additional Sessions Judge that the first Respondent can be treated to be in custody is obviously contrary to the aforesaid decisions of the Apex Court in the case of Sunita Devi(supra) and Nirmaljit Kaur(supra). It will be also necessary to note that in the Agreement between the two countries there is a specific provision that even after arrest in Kingdom of Belgium, a person can be released temporarily in accordance with law prevailing in the said country. The first Respondent cannot be said to be in custody as he is not under the control of any court in India. He is also not under control of any investigation agency, police agency or allied agency. No court or authority in India can have any control over the first Respondent unless he is brought to India and placed in the custody of proper authority or is produced before appropriate court.

23. The object of the said Act of 1962 is to bring back a person suspected of extradition offence to India and to ensure that he is placed in the custody of a proper authority. The learned A.P.P. has stated

that after the first Respondent is brought to India, he will be at earliest produced before the learned Additional Chief Metropolitan Magistrate, 19th Court, Mumbai. Only after he is produced before the said court, the learned Magistrate, if otherwise permissible in law, can exercise powers under section 437 of the said Code. The first Respondent is not in custody. It is also pertinent to note that as of today the first Respondent has not been arrested by any authority in India on the basis of F.I.R. lodged by the Applicant.

24. The conclusion of the aforesaid discussion is that the learned Additional Sessions Judge could not have granted bail under section 439 of the said Code as the first Respondent cannot be said to be in the custody within the meaning of section 439 of the said Code.

25. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 11th August, 2006 is quashed and set aside and Bail Application No.1526 of 2006 is dismissed.

(ii) After the first Respondent is brought to

India, the investigating agency will immediately produce the first Respondent before the court of the concerned Magistrate.

(iii) If the first Respondent thereafter makes an Application for grant of bail before the appropriate court, the concerned court will decide the said Application at the earliest by giving priority.

(iv) It is made clear that no adjudication is made by this court as regards entitlement of the first Respondent to be enlarged on bail either under section 437 or under section 439 of the said Code.

(v) Application is allowed in above terms.

JUDGE